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Held at Headquarters, New York, on Wednesday, 9 May 2001, at 10 a.m.

Chairman: Mr. Rosenthal ..... (Guatemala)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Mselle

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The meeting was called to order at 10.20 a.m.

Agenda item 116: Review of the efficiency of the administrative and financial functioning of the United Nations (*continued*)

Agenda item 117: Programme budget for the biennium 2000-2001 (*continued*)

Review of management and administration in the Registry of the International Court of Justice (A/55/834 and A/55/834/Add.1)

1. **Mr. Bouayad-Agha** (Joint Inspection Unit), introducing the report of the Joint Inspection Unit (JIU) on the review of management and administration in the Registry of the International Court of Justice (A/55/834), said that in the somewhat lengthy interval between the conduct of the review in 1999 and the submission of the report to the Fifth Committee, many of the deficiencies identified by JIU had been corrected. The Committee should nevertheless take note of the situation which had prevailed in the Registry of the Court in 1999, since it illustrated the extent of the internal capacity for remedial action and could provide valuable lessons applicable to the administration of other United Nations bodies. The review had concerned only administrative matters, not the competence or working methods of the Court's judges.

2. Generally speaking, JIU had found that the Registry's administration was unsatisfactory, if not anarchic, and had been adversely affected by a budget which was insufficient in relation to the growing workload and by a certain malaise which had been widely acknowledged by the judges and the Registry staff. For example, recruitment and promotion practices lacked transparency and consistency, particularly owing to the lack of standard procedures similar to those used in the United Nations system, unduly long vacancies and cases of favouritism. The Court had no performance appraisal system and had never considered implementing one until JIU had raised the issue.

3. JIU had been surprised to note the poor condition of archiving facilities, which had exposed valuable historical documents to deterioration and security threats and had created unhealthy working conditions. Fortunately, the General Assembly, at its fifty-fourth session, had approved increased funding for furniture and equipment at the Court, and those resources had been used to replace storage cabinets and to install temperature and humidity control systems. Another serious shortcoming had been the failure, since 1987, to keep the General List constantly updated, in violation of article 26, paragraph 1 (b), of the Rules of Court. That obligation had not been met until after the Court had made a specific request to that effect in 1996. Relations between the Registrar, on the one hand, and the Deputy Registrar and certain department heads, on the other, had improved substantially since the early departure of the former Registrar and the measures taken by the judges to reorganize Registry services. Despite the difficult situation they had faced, the Registry staff had performed their functions with great dedication.

4. While the Court intended to propose the establishment of 15 research assistant posts, JIU, in its recommendation 1, had proposed the establishment of only three such posts because that had been the number most often mentioned in its interviews with individual judges; because it wished to determine whether and to what extent such assistance was needed; and because the recruitment of 15 P-2 research assistants at the same time would create management difficulties for the Department of Legal Matters. Recommendation 2, which concerned the follow-up to rationalization decisions, had already been fully implemented.

5. Paragraphs 42 to 45 of the JIU report explained the rationale for recommendation 3, which proposed the reduction of the Registrar's term of office to three years. JIU felt that the Registrar's term of office should be the same as that of the President of the Court and that the Rules of Court should provide for a system for appraising the Registrar's performance. JIU had taken note of the Court's indication that, while the proposal was not without its merits, it could not endorse the recommendation. JIU was pleased to note that the Court had already acted on its recommendation 4, in which it had suggested that the Deputy Registrar should be appointed in consultation with the Registrar.

6. Recommendation 5 had already been implemented as a result of General Assembly resolution 55/239, which had approved the establishment of 12 additional posts in the Division of Linguistic Matters. Recommendation 6 was intended to address the malaise to which he had referred earlier; the situation had begun to change after the inspectors'

meetings with staff and the Budgetary and Administrative Committee, and the new President of the Court and new Registrar had made every effort to correct the problem. The recommendation was based on the inspectors' analysis of certain administrative and financial practices of the Registry. The Court had indicated that points (a), (b) and (e) of the recommendation had already been implemented, and, in relation to point (f), that it would examine the measures that should be taken to improve the information available to staff concerning the remedies available in case of harassment. However, JIU had recommended not that the Court should improve information, but that it should issue administrative instructions prohibiting harassment, as did a number of organizations of the United Nations system. JIU regretted that the Court had not agreed to the introduction of a performance appraisal system, particularly as the Secretary-General had endorsed that suggestion, as well as those contained in points (d), (e), (g) and (h).

7. The Court had supported recommendation 7 on the appointment of a senior administrative/personnel officer, noting that that measure would facilitate the implementation of some of the other recommendations. Recommendation 8 concerned the improvement of cooperation and coordination between the Registrar and his or her counterparts at the Organization for the Prohibition of Chemical Weapons (OPCW) and the International Tribunal for the Former Yugoslavia. While the potential for common services among those bodies was very limited, cooperation among the bodies located in The Hague could help them to solve administrative problems in areas such as outsourcing, medical services, security, insurance and relations with the host country. The Court appeared to share that view.

8. **Mr. Sach** (Director, Programme Planning and Budget Division) introduced the Secretary-General's comments on the JIU report, which were contained in document A/55/834/Add.1, annex II. The comments were confined to purely budgetary matters, and related to recommendations 1, 5 and 7 of the JIU report. Since the issuance of that report, provision for the new post referred to in recommendation 7 had been made in the proposed programme budget for 2002-2003. Recommendation 5 had been overtaken by events, since the additional language posts to which it referred had already been approved. With respect to recommendation 1, no provision had been made as yet in the proposed programme budget for 2002-2003 because, in view of the differences of opinion between JIU and the Court in that regard, the Secretary-General had not wished to prejudice the discussion of the issue by Member States, and preferred to await the guidance of the General Assembly.

9. **Mr. Couvreur** (Registrar, International Court of Justice) drew the Committee's attention to the Court's comments on the report of JIU, which were contained in document A/55/834/Add.1, annex I, adding that he stood ready to provide any further information the Committee might desire.

10. **Mr. Lavalle-Valdés** (Guatemala) said that the Registry of the International Court of Justice, though barely mentioned in the Statute of the Court and not usually viewed as contributing directly to the purposes of the United Nations, nevertheless played a vital role by providing the support that enabled the Court to perform its functions successfully. The Registry must act with complete independence from the Secretariat of the United Nations. The difficulty and sensitivity of many of its tasks demanded a wide range of abilities and talents on the part of its staff. Many of its administrative functions were far from routine, and it was also required to carry out substantive functions that required sound knowledge and experience not only in linguistic matters, but also in the increasingly complex areas of public information and international law. Much, if not most, of the burden of the tremendous increase in the Court's workload in recent years was borne by the staff of the Registry.

11. His delegation had therefore been surprised and concerned to note the negative comments on the Registry's functioning contained in paragraphs 38, 39, 47, 49, 50 and 84 (d) of the JIU report. Conversely, it had welcomed the favourable comments, in paragraph 52, on the Department of Legal Matters, which, at the time of the inspection, had been headed by the current Registrar of the Court. Nevertheless, it remained concerned about the "malaise" referred to in paragraphs 38 and 39, to which even the Department of Legal Matters could not have been immune. Fortunately, steps had already been taken to remedy some of the deficiencies that JIU had identified.

12. With respect to the recommendations made by JIU for enhancing the Registry's efficiency, it seemed advisable, for obvious reasons, to make research

assistants available to the judges. Likewise, it would be appropriate to establish a post to assist the Registrar in personnel management. His delegation was pleased that such a post had been included in the proposed programme budget for 2002-2003.

13. **Mr. Repasch** (United States of America) expressed his satisfaction that the Court had already implemented certain recommendations of JIU. His delegation was, however, very disappointed that the senior management had not taken direct steps to resolve the managerial difficulties and it was disturbed by the Court's reluctance to introduce a personnel appraisal system; it would like further clarifications. In addition, the Court should provide a status report on the implementation of the JIU recommendations, in particular those relating to improving the administrative functioning of the Court. He would like to know whether there was any oversight mechanism, such as Office of Internal Oversight Services (OIOS), that monitored, on a regular basis, the managerial functions of the Court. It was indeed troubling to learn that such management deficiencies had continued undetected over the course of many years.

14. Finally, the progress made by ICJ in implementing those recommendations should be taken into consideration when its budget was considered later in the year.

15. **Mr. Rajeh** (Saudi Arabia) said that his delegation supported all the recommendations in the report. It would like to know, however, whether the term of office of the Deputy Registrar was linked to that of the Registrar, whether those two positions had the same length of term of office, and whether their terms coincided. If a Registrar left office, was the Deputy Registrar also obliged to depart?

16. **Mr. Nakkari** (Syrian Arab Republic) said that in order for the mandate of the Court to be competently fulfilled, all its needs should be met. His delegation fully supported recommendations 1, 5 and 7, and hoped that the necessary resources would be provided in the proposed programme budget. Normally, the recommendations of JIU appeared in bold at the beginning of the document, and the comments of the Secretary-General followed: his delegation would like that format to be adhered to in future.

17. **Mr. Nesser** (Sweden), speaking on behalf of the European Union, said that the European Union was closely monitoring that issue, and would revert to it during the informal discussions.

18. **Mr. Yussuf** (United Republic of Tanzania) said that, his delegation had been astonished to learn that there had been so many problems within the International Court of Justice (ICJ). The Registrar was essential to the administration of any court. Since the Secretary-General appointed the Registrars for the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, he would like to know why he did not appoint the Registrar for the International Court of Justice as well. That was particularly the case since the Registrar should be an international civil servant known for his high degree of personal integrity. His delegation would support the recommendations of JIU, but thought it useful to consider the matter within the framework of the overall administrative structure of the United Nations.

19. **Mr. Fox** (Australia) said that his delegation, too, was surprised by the comments of ICJ with respect to the establishment of a staff appraisal system; in its view, all organizations should have such a system, regardless of their size. Since ICJ had requested 15 law clerks, and JIU was proposing that only 3 should be appointed, he would like to know whether any provision had been made for the appointment of new law clerks, and whether such appointments would require action by the General Assembly at the coming session. He would also like to know the views of ICJ with regard to its needs for 15 law clerks.

20. **Mr. Chandra** (India) said that his delegation was pleased that certain weaknesses identified by JIU had been rectified since the issuance of the report. It wholly agreed with recommendation 1, noted that recommendations 2 and 5 had been implemented in full, and suggested that recommendations 3 and 4 should be dealt with in detail during the informals. As for recommendation 6, he hoped that the malaise in the Registry could be discussed in an open, unprejudiced manner. Some points were insufficiently clear. On the one hand, the Inspectors were satisfied with the implementation of recommendation 6, paragraphs (a), (b) and (e), on the other, they could not agree with the Court's reluctance to implement a staff appraisal system, mentioned in paragraph (c). His delegation was appreciative that JIU had borne in mind the sensitivity of the issues under consideration and it agreed, in

general, with recommendations 7 and 8, and looked forward to discussing them during the informals.

21. Finally, the question should be asked whether the managerial malaise might not directly arise from the budgetary constraints and the expanding workload.

22. **Mr. Bouayad-Agha** (Joint Inspection Unit) drew the attention of the United States delegation to paragraph 2 of the introduction to the JIU report (A/55/834), which specified that ICJ was subject to review by OIOS. In fact, JIU had begun its examination of ICJ in consultation with that office in 1999. The two bodies were, in part, working together; OIOS was currently evaluating the work of the former Registrar, and would submit a report to the General Assembly shortly.

23. Replying to questions raised by the representative of the United Republic of Tanzania, he said that, although the Court enjoyed judicial autonomy, it was dependent on and answerable to the General Assembly; the latter bore its costs and determined its Statute. The Secretary-General did not have the power to appoint the registrar.

24. **Mr. Couvreur** (Registrar, International Court of Justice) replying to questions, said that the Court had judicial autonomy, and its own system for appointing and managing staff. Under its Statute, the Court appointed its own registrar; his appointment by the Secretary-General would not be possible. The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda were bodies subordinate to the Security Council, so theirs was an entirely different case.

25. The Court had responded to all the recommendations of JIU; its position regarding a staff appraisal system was expressed in document A/55/834/Add.1, annex I, paragraph 27. It considered that a staff appraisal system might be counterproductive, in view of the recourses and rebuttals that might ensue but it might reconsider the matter if the staff was enlarged. In addition, all staff members knew what all others were doing, and with what level of skill or competence. The number of overtime hours worked by the staff was always enormous. The Court had been unable to implement a shift system, and the staff who worked late into the night during emergencies were the same persons who returned to work early the next morning. Payment of overtime was the only possible recompense, since staff could not use compensatory leave because of the heavy workload.

26. Both the Registrar and the Deputy Registrar were elected for terms of seven years. The Court preferred the seven-year term because of the difficulty of finding candidates who were both judicial officers and also qualified to carry out the varied and delicate tasks required by the job. That length of term was common in international jurisdictions; some were longer. The term of a registrar was generally identical or similar to that of a judge. The terms of the Registrar and the Deputy Registrar were independent.

27. In reply to the representative of Australia, he said that the number of cases before the Court had doubled in recent years and that cases were accompanied by voluminous documentation. Translation for the Court amounted to 11 million words per biennium; moreover, many of the judges were native speakers of a language other than French or English and required linguistic assistance in drafting their notes and rulings. It was therefore important for each judge to have a reliable law clerk to serve as research assistant.

28. **Mr. Sach** (Director, Programme Planning and Budget Division), replying to questions on funding for the implementation of recommendations 5 and 7, drew attention to his earlier introductory statement. Regarding recommendation 1, since the Court was requesting 15 additional law clerks rather than the three recommended by JIU, his Division had sought guidance from the General Assembly. It was for the Committee to choose when to take a decision on the matter; however, it must do so prior to the adoption of the proposed programme budget for the biennium 2002-2003.

29. It had been suggested that the "malaise" in the working atmosphere of the Registry might be due to inadequate resources. Despite the budgetary constraints under which the Organization had laboured in recent years, particular care had been taken to provide for the Court's needs to the extent possible. It had been exempted from across-the-board staff reductions during the 1998-1999 biennium; in fact, the proposed programme budgets had included 7.6 per cent and 3.1 per cent increases for 1998-1999 and 2000-2001, respectively. Thus, 63 posts had been approved as at December 1999; 12 more had been added in December 2000 and an additional 16 were included in the proposed programme budget for 2002-2003; if the

latter posts were approved, the Court would have a total of 91 staff members, without prejudice to the proposals for hiring additional law clerks.

30. **Mr. Yussuf** (United Republic of Tanzania) said that he was not satisfied with the explanations provided by the representatives of JIU and the Court. If the Court were fully independent in its functions, the Committee would not be engaged in the current discussion. Of course, there should be no interference with the Judges' work and decisions; however, it was important for them to have as effective and efficient a staff as possible. All posts at the level of Registrar and below were filled by support staff who should be governed by the rules and procedures of the United Nations. If the Court was in fact entitled to establish its own procedures at the administrative level, the General Assembly should consider amending its Statute. He planned to pursue that matter vigorously during the informal consultations.

31. **Mr. Repasch** (United States of America) noting that the Court had maintained, in its comments on the report, that the introduction of a performance appraisal system was not warranted by the small size of the Registry, asked how great an increase in staff would be necessary for such a system to be considered appropriate.

32. **Mr. Nakkari** (Syrian Arab Republic) asked when the additional 16 posts mentioned by the Director of the Programme and Planning Division had been recommended for inclusion in the proposed programme budget for the biennium 2002-2003.

33. His delegation endorsed recommendation 7 but requested additional information on recommendation 5. He also wondered how recommendation 1, if adopted, would be implemented and, in more general terms, how measures with programme budget implications were funded if they were adopted after the Secretariat had submitted the proposed budget to the Advisory Committee.

34. **Mr. Fox** (Australia) asked how, in the absence of a performance evaluation system, the Registry handled cases of poor performance by its staff.

35. **Mr. Sach** (Director, Programme Planning and Budget Division) said that the additional 16 posts that he had mentioned had been approved in December 2000 on the basis of the revised estimates provided by the Secretary-General.

36. Recommendation 1, if adopted, could be implemented according to the usual procedure for considering programme budget implications; alternatively, the Committee could decide to take the recommendation into account in reviewing the proposed programme budget for the biennium 2002-2003 at the fifty-sixth session of the General Assembly.

37. The manner in which the Registrar was appointed was not open to interpretation; Chapter XIX, Article 92, of the Charter specifically stated that the Court would function in accordance with its Statute, article 21 (2) of which stipulated that the Court was to appoint its Registrar and that it could provide for the appointment of such other officers as might be necessary.

38. **Mr. Couvreur** (Registrar, International Court of Justice), replying to the representative of the United States of America, said that he could not speak for the Court regarding the point at which staffing increases might make it advisable to introduce a performance evaluation system.

39. He assured the representative of Tanzania that the Registry was not above the law. It had a separate Statute that was an integral part of the Charter; thus, while its staff were United Nations officials, they were not under the authority of the Secretary-General. That situation could not be changed without amending the Charter.

40. In reply to the representative of Australia, he said that, as in any workplace, written notice of unacceptable performance would be given to the employee concerned; if the problem continued, a note would be placed in the staff member's file. Persistent inadequacy could result in non-renewal of contract.

41. **Mr. Bouayad-Agha** (Joint Inspection Unit) said that while the Court was small, it had many important responsibilities. For years, JIU had been trying to convince the judges that while they were independent in their work, they lived in an ivory tower and lacked experience in the field of administration. By endorsing the JIU proposal to create a post of Senior Administrative/Personnel Officer to assist the Registrar in personnel management, the Court had recognized the complexity of the latter's responsibilities; moreover, serious problems with a former Registrar had even led it to consider impeachment. After consulting with all the judges, JIU had concluded that a three-year renewable term of office would make it possible to

correct any future problems and that the Registrar, who was responsible for assisting the judges in their work, should not be required to make final decisions on personnel matters. He did not agree with the Court that it would be difficult to recruit candidates to a three-year post.

42. Lastly, the General Assembly was responsible for approving the Court's budget, and had a right to require monitoring through, inter alia, the introduction of a performance assessment system. The current Registrar, who had long been denied promotion, could attest to the injustices of the current mechanism. The fault did not lie with the judges, who had other responsibilities, but the Court's administrative procedures must be brought into line with the rest of the United Nations system.

43. **Mr. Fujii** (Japan) said that he shared the concern expressed by the representatives of Australia and the United States of America, particularly regarding the need for a performance evaluation system. Any body which received funding under the Organization's budget should be prepared to give the General Assembly a convincing explanation of its behaviour.

44. **Mr. Chandra** (India) said that provided that the Court retained its judicial autonomy and its power to appoint its own staff, he had no objection to the establishment of a shorter, renewable term of office for the post of Registrar.

45. **Mr. Bouayad-Agha** (Joint Inspection Unit) said that he would reserve further comments for the Committee's informal consultations.

Other matters

46. **Ms. Álvarez Núñez** (Cuba) said that the representative of Cuba normally assigned to the Fifth Committee had not yet received the entry visa and therefore could not participate in the Committee's deliberations at the current time. The host country imposed discriminatory deadlines for visa requests on nationals of certain countries. In the case of Cuba, the onerous imposition of a 21-day waiting period for the issuance of a visa limited the participation of Cuban representatives in United Nations bodies. The Permanent Mission of Cuba hoped that the situation would be resolved promptly by the authorities of the host country, and regretted to inform the Committee that the Cuban delegation would not be in a position to accept any understanding reached or decision taken until its specialized representative was able to take part in the Committee's discussions.

The meeting rose at noon.